

Respondent's challenge to the compensability of this claim is twofold. First, respondent contends that the injury claimant attempts to connect to an alleged October 16, 1995 accident at work actually preexisted his employment with respondent. Second, respondent argues that the claimant should be precluded from receiving workers compensation benefits because he has attempted to obtain those benefits by means of false statements.

Claimant was hired as a truck driver by respondent during the latter part of September 1995 and commenced work on or about October 2, 1995. Claimant testified that on October 16, 1995 as a part of his job duties, he drove a tractor trailer from the respondent's warehouse to the Sante Fe railway terminal in Kansas City, Missouri. While there he attempted to disengage the fifth wheel. When the pin did not give initially, claimant gave the pin an extra effort. This resulted in injury to his low back with pain radiating down his left leg.

Claimant was initially seen by the company doctor, R. A. Stoermann, D.O., who advised him that he had pulled a muscle. Prescription drugs and physical therapy were prescribed. Claimant did not improve and on his own went to Dr. Richard Wendt, an orthopedic surgeon. Claimant had treated previously with Dr. Wendt, which included treatment for an injury in August of 1995 which Dr. Wendt had treated him for right up to the time claimant went to work for respondent. Dr. Wendt performed a lumbar hemilaminotomy and discectomy at the L4-5 interspace on October 24, 1995. Respondent argues that claimant's low back condition preexisted his employment with respondent and that claimant did not present any evidence, in the form of medical opinions or otherwise, stating that claimant's work with respondent had aggravated his preexisting low back condition.

Claimant testified that he was able to successfully perform his job duties with the respondent and was without significant pain up until his injury of October 16, 1995. Thereafter, he was in considerable pain until his surgery on October 24, 1995. Unfortunately, the issue of causation is not directly addressed in the medical evidence. The preliminary hearing record does not contain a narrative report or testimony from Dr. Wendt stating his opinion as to whether claimant suffered an aggravation of his preexisting low back condition on October 16, 1995 or otherwise clearly relating the need for the October 24, 1995 surgery to claimant's employment with respondent, nor does the record contain such an opinion from Dr. Stoermann. However, the record does contain certain office notes and hospital records whereby Dr. Wendt relates by history the claimant's complaints to an injury at work on October 16, 1995. In addition, in an off-work/return-to-work certificate dated November 22, 1995 signed by Dr. Wendt, he certifies that claimant has been under his care and treatment, including a laminectomy on October 24, 1995, and may return to work approximately January 29, 1996. This note specifically refers to a work injury on October 16, 1995. In the absence of any evidence to the contrary, the Appeals Board accepts this note as relating the care and treatment given claimant by Dr. Wendt, after October 16, 1995, including the surgery, to the claimed work-related accident. Even the company physician, Dr. Stoermann, diagnosed a lumbosacral strain or sprain injury to have resulted from the October 16, 1995 incident. Although Dr. Stoermann may not have had a complete picture of claimant's medical history, there was no evidence offered to suggest that Dr. Stoermann would have changed his opinion were he given additional information.

Whether claimant sustained a new injury on October 16, 1995 or whether he simply aggravated a preexisting condition is immaterial to the question of his entitlement to preliminary benefits under K.S.A. 44-534a. An aggravation of a preexisting condition is fully compensable for purposes of preliminary hearing.

Respondent next argues that claimant is not entitled to recover benefits in this action because his claim is based upon false information and statements. Respondent points to evidence that indicates claimant did not fully disclose his preexisting condition and

treatment history to the company physician during his preemployment physical and that he likewise did not do so after his accident when he was initially seen by Dr. Stoermann . Furthermore, respondent contends that the claimant's credibility was further impeached at preliminary hearing by his answers to questions concerning prior accidents and workers compensation claims. Claimant's counsel replies by contending that what respondent refers to as inconsistencies can actually be explained by claimant's confusion as to what constitutes a prior "back injury" and what constitutes a prior workers compensation claim where there may have been an injury at work for which time may have been lost and/or medical benefits were received but where no claim was filed or docketed.

Claimant actually had two preemployment physicals with respondent, the first of which he failed. The records from that initial examination appear to make reference to a preexisting lumbosacral problem with ongoing complaints. The second preemployment physical was performed by a different physician and the extent to which the prior records may have been available is not clear. However, there is clearly a dispute as to the extent to which the claimant should have disclosed his recent low back treatments with Dr. Wendt even if he considered those symptoms to have substantially resolved. Even accepting as true the respondent's contention that claimant deliberately withheld relevant information concerning his medical history at the time of his second preemployment physical, we do not agree that such action precludes claimant from receiving benefits in what is otherwise determined to be a compensable claim. Nevertheless, such evidence may go to the claimant's credibility as to whether or not he did sustain a work-related accident resulting in an aggravation of his preexisting condition. The claimant's credibility is important and certainly goes to the question of what weight is to be given a physician's opinion on causation when such opinion relies in part upon the history provided to the physician by the claimant. In this case the credibility issue was resolved in the claimant's favor by the Administrative Law Judge who had the opportunity to observe the in-person testimony of the claimant. The Administrative Law Judge determined that claimant met his burden of proving accidental injury arising out of and in the course of his employment with respondent. The Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe claimant's testimony in assessing his credibility and gives some deference to the conclusions of the Administrative Law Judge in that regard. Furthermore, the claimant's testimony as to how his accident occurred and the medical evidence relating claimant's present condition to the work-related accident is uncontroverted. Although respondent has established that claimant possessed a preexisting low back condition, there is no testimony disputing claimant's version of the accident nor that his preexisting back condition was aggravated thereby.

Based upon the Appeals Board review of the record as a whole, including the claimant's testimony and the medical records and reports in evidence, we find that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the March 5, 1996 preliminary hearing Order of Administrative Law Judge Alvin E. Witwer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

- c: Eugene C. Riling, Lawrence, KS
Richard W. Morefield, Jr., Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director